

(c) *Evidence of compliance with a stay.* Within five working days from the date of a stay order or an order extending a stay, the agency ordered to stay a personnel action must file evidence setting forth facts and circumstances demonstrating compliance with the order.

(d) *Termination of stay.* A stay may be terminated at any time, except that a stay may not be terminated:

(1) On the motion of an agency, or on the deciding official's own motion, without first providing notice and opportunity for oral or written comments to the Special Counsel and the individual on whose behalf the stay was ordered; or

(2) On the motion of the Special Counsel without first providing notice and opportunity for oral or written comments to the individual on whose behalf the stay was ordered. 5 U.S.C. 1214(b)(1)(D).

(e) *Additional information.* At any time, where appropriate, the Special Counsel, the agency, or both may be required to appear and present further information or explanation regarding a request for a stay, to file supplemental briefs or memoranda, or to supply factual information needed to make a decision regarding a stay.

[62 FR 48451, Sept. 16, 1997, as amended at 63 FR 42686, Aug. 11, 1998]

ACTIONS AGAINST ADMINISTRATIVE LAW JUDGES

§ 1201.137 Covered actions; filing complaint; serving documents on parties.

(a) *Covered actions.* The jurisdiction of the Board under 5 U.S.C. 7521 and this subpart with respect to actions against administrative law judges is limited to proposals by an agency to take any of the following actions against an administrative law judge:

- (1) Removal;
- (2) Suspension;
- (3) Reduction in grade;
- (4) Reduction in pay; and
- (5) Furlough of 30 days or less.

(b) *Place of filing.* To initiate an action against an administrative law judge under this subpart, an agency must file a complaint with the Clerk of the Board.

(c) *Initial filing and service.* The agency must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The agency must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service. The initial filing in a complaint may not be submitted in electronic form.

(d) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by § 1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by commercial or personal delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic filing.* All pleadings may be filed and served in electronic form at the MSPB e-Appeal site (<https://e-appeal.mspb.gov/>), provided the requirements of § 1201.14 are satisfied.

[62 FR 48451, Sept. 16, 1997, as amended at 68 FR 59863, Oct. 20, 2003; 69 FR 57630, Sept. 27, 2004; 73 FR 10130, Feb. 26, 2008]

§ 1201.138 Contents of complaint.

A complaint filed under this section must describe with particularity the facts that support the proposed agency action.

§ 1201.139 Rights; answer to complaint.

(a) *Responsibilities of Clerk of the Board.* The Clerk of the Board shall furnish a copy of the applicable Board regulations to each administrative law judge named as a respondent in the

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complaint and shall inform each respondent of his or her rights under paragraph (b) of this section and the requirements regarding the timeliness and content of an answer to the agency's complaint under paragraphs (c) and (d), respectively, of this section.

(b) *Rights.* When an agency files a complaint proposing an action against an administrative law judge under 5 U.S.C. 7521 and this subpart, the administrative law judge has the right:

(1) To file an answer, supported by affidavits and documentary evidence;

(2) To be represented;

(3) To a hearing on the record before an administrative law judge;

(4) To a written decision, issued at the earliest practicable date, in which the administrative law judge states the reasons for his or her decision; and

(5) To a copy of the administrative law judge's decision and subsequent final decision by the Board, if any.

(c) *Filing and default.* A respondent named in an agency complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a respondent fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the administrative law judge's decision.

(d) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

§ 1201.140 Judge; requirement for finding of good cause.

(a) *Judge.* (1) An administrative law judge will hear an action brought by an employing agency under this subpart against a respondent administrative law judge.

(2) The judge will issue an initial decision pursuant to 5 U.S.C. 557. The applicable provisions of §§1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the ju-

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risdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

(b) *Requirement for finding of good cause.* A decision on a proposed agency action under this subpart against an administrative law judge will authorize the agency to take a disciplinary action, and will specify the penalty to be imposed, only after a finding of good cause as required by 5 U.S.C. 7521 has been made.

§ 1201.141 Judicial review.

An administrative law judge subject to a final Board decision authorizing a proposed agency action under 5 U.S.C. 7521 may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 7703.

§ 1201.142 Actions filed by administrative law judges.

An administrative law judge who alleges a constructive removal or other action by an agency in violation of 5 U.S.C. 7521 may file a complaint with the Board under this subpart. The filing and serving requirements of 5 CFR 1201.37 apply. Such complaints shall be adjudicated in the same manner as agency complaints under this subpart.

[71 FR 34232, June 14, 2006]

REMOVAL FROM THE SENIOR EXECUTIVE SERVICE

§ 1201.143 Right to hearing; filing complaint; serving documents on parties.

(a) *Right to hearing.* If an agency proposes to remove a career appointee from the Senior Executive Service under 5 U.S.C. 3592(a) (2) and 5 CFR 359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official designated by the Board. Under 5 CFR 359.502, the agency proposing the removal must provide the appointee 30 days advance notice and must advise the appointee of the right to request a hearing. If the appointee files the request at least 15 days before the effective date of the